

GEORGE RUPPERT
P.L. # 1

01372

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-186663

DATE: December 15, 1976

MATTER OF: Stahl Soap Corporation - Request for Reconsideration

DIGEST:

Cancellation of IFB after bid opening is not objectionable, since award under order would not meet actual requirements of Government.

By letter of October 27, 1976, Stahl Soap Corporation (Stahl) requested reconsideration of our decision of October 22, 1976, which denied its protest against the cancellation of invitation for bids (IFB) 9PR-W-876-76/EU, issued by the General Services Administration (GSA), Region 9, San Francisco, California.

Stahl's protest was based on its contention that no compelling reason existed for canceling the IFB and that any qualification of its bid by offering a polyethylene bag of 2 mil construction was minor and should have been waived. Stahl further stated that the only difference between the original IFB and the resolicitation is the deletion of the moisture adjustment clause and the elimination of the case liner which Stahl contends is an immaterial change.

Our decision upheld the cancellation of the IFB stating that there was a change in requirements that provided a basis for cancellation. Our decision stated in part:

"In the circumstances of this case, we believe that the original invitation's failure to delete the moisture adjustment clause, which in turn required the prohibition of the case liners for Level "B" packing, constituted a compelling reason for canceling the initial IFB."

We stated that the actual needs of the Government were not adequately defined in the original IFB and therefore any award under the IFB would be improper.

B-186663

In its request for reconsideration, Stahl contends that the record before our Office is devoid of any evidence or indication that "a change in requirements * * * provided a basis for cancellation (of the original IFB)." Further, Stahl contends that our statement that procurement under the original IFB would not have satisfied the Government's actual needs is incorrect. It is Stahl's position that procurement under the original IFB would have meant procuring the same soap, packed and bought the same way as GSA has been procuring for eleven years and that the only difference between the two IFB's is the absence of a moisture adjustment clause in the new one.

Further, Stahl contends that there would be none of the problems of soap bars "coalescing" if the contract were awarded under the old specification, since the contract would then contain a moisture adjustment clause, and the whole question of prohibiting case liners and soap bars coalescing arises only in the absence of a moisture adjustment clause. Thus, the soap bought under the old specification would have met the Government's needs according to Stahl.

The record before us indicates that the original IFB was canceled after determining that Stahl's bid took an exception to the applicable Federal specification P-S-591(G), dated December 28, 1965, and the next low bid was determined excessive as to price. Subsequent to the decision to cancel the IFB for the above reasons, it was determined that a new specification for soap (P-S-591(H) dated February 10, 1976) had been developed and approved for use which substantially changed the method of payment under the IFB by deleting a "moisture adjustment payment clause" and basing payment on the unit of issue. GSA advised our Office that the new specification was not available in time for it to be included in the original IFB.

We agree with Stahl that the stated reason for canceling the IFB did not mention the specification being inadequate, ambiguous or otherwise deficient. However, once the propriety of a procurement action has been questioned through the filing of a protest with our Office, we are obligated to consider all the relevant circumstances including those which may not have been considered initially by the contracting officer. Juanita N. Burns et al., 55 Comp. Gen. 587, 588 (1975), 75-2 CPD 400.

B-186663

In that regard, although not relied upon in the IFB cancellation notice, it is a fact that the changed needs of the Government were not stated in the original IFB which contained Federal specification F-S-591(G). While SA might have procured in the past on the same basis as was contained in the original IFB, the change in the specification to F-S-591(F) was a material revision in that the moisture adjustment clause was deleted which, in turn, required the prohibition of the case liners for Level "B" packing. In the circumstances, we do not object to the cancellation of the IFB, since award under the original IFB would not meet the revised requirements of the Government. See Communications Design, Incorporated, B-182843, May 15, 1975, 75-1 CPD 298.

Accordingly, our decision of October 22, 1976, is affirmed.

Paul B. Stuchlik
For the Comptroller General
of the United States